

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**FOSTER OGOLA, ELDER ENDURE
HUMPHREY FISEI, FRESH TALENT,
MATTHEW KINGDOM MIESEIGHA,
CHRIS WILFRED ITONYO, AND NATTO
IYELA GBARABE,**

Plaintiffs,

v.

CHEVRON CORPORATION,

Defendant.

Case No. 14-cv-00173-SC

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION FOR THE
SANCTION OF DISMISSAL FOR
FIVE PLAINTIFFS' FAILURE TO
COMPLY WITH DISCOVERY
OBLIGATIONS**

Defendant Chevron Corporation's Motion for the Sanction of Dismissal for Five Plaintiffs' Failure to Comply with Discovery Obligations was regularly heard and duly considered by this Court. Based on the papers filed in support of and opposition to the motion, and oral argument thereon, the Court makes the following findings of fact and law:

1. Plaintiffs Foster Ogola, Elder Endure Humphrey Fisei, Fresh Talent, Matthew Kingdom Mieseigha, and Chris Wilfred Itonyo (the "Five Plaintiffs") were served with two sets of requests for production of documents and one set of interrogatories in the above-captioned case.

1 2. The deadline for responding to this discovery was April 3, 2015. The Five Plaintiffs
2 did not respond on that date or at any time thereafter.

3 3. The Five Plaintiffs are not cooperating with their own counsel in the above-captioned
4 case.

5 4. Defendant's efforts to meet and confer have not yielded any commitment to respond to
6 the discovery by the Five Plaintiffs and there is no prospect that they will respond.

7 5. Applying the Ninth Circuit's five-factor test to determine whether dismissal is the
8 appropriate sanction favors dismissal based on the facts of this case. The first factor is the
9 public's interest in expeditious resolution of the litigation. This factor weighs in favor of
10 dismissal. *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). The second factor is the
11 court's need to manage its dockets. This also weighs in favor of dismissal. *Id.* The third factor is
12 the risk of prejudice to the party seeking sanctions. If Chevron is forced to continue to litigate
13 against plaintiffs who provide no information in response to discovery, it is prejudiced. *Adriana*
14 *Int'l Corp. v. Lewis*, 913 F.2d 1406, 1412 (9th Cir. 1990). The fourth factor is the public policy
15 favoring disposition of cases on their merits. This factor weighs against dismissal as a sanction.
16 *Wanderer*, 910 F.2d at 656. The final factor is the availability of less drastic sanctions. It is
17 unlikely under the present circumstances that other sanctions will be effective in extracting
18 cooperation from the Five Plaintiffs. Because the Five Plaintiffs' relationship with their counsel
19 is broken and they are not cooperating, it is untenable to continue with them as representatives of
20 a putative class. *See Richardson v. City of Spokane Wash.*, 2013 U.S. Dist. LEXIS 180002, at *7
21 (E.D. Wash. Dec. 23, 2013). Accordingly, I find that no less drastic sanction is feasible.

22 IT IS HEREBY ORDERED THAT:

23 Defendant's motion granted. The Second Amended Complaint is dismissed with
24 prejudice as to Foster Ogola, Elder Endure Humphrey Fisei, Fresh Talent, Matthew Kingdom
25 Mieseigha, and Chris Wilfred Itonyo.

1 IT IS SO ORDERED.

2
3 Dated: June __, 2015

By: _____
4 HONORABLE SAMUEL CONTI
United States District Court Judge

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